BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:	
Opinion requested by Edwin L. Miller District Attorney, County of San Diego	No. 75-125 July 6, 1976

BY THE COMMISSION: We have been asked the following question by Edwin L. Miller, District Attorney for the County of San Diego:

Does a chartered city have the authority to enact an ordinance which differs from and supersedes the provisions of the Political Reform Act requiring disclosure of campaign finance information?

CONCLUSION

A chartered city does not have the authority to enact an ordinance which differs from and supersedes the campaign finance disclosure provisions of the Political Reform Act. A chartered city may, however, enact an ordinance which imposes additional disclosure requirements if such additional requirements do not prevent compliance with the Political Reform Act. Government Code Section 81013.

ANALYSIS

The Political Reform Act of 1974 requires all candidates and committees, including those involved in elections conducted in chartered cities, to file campaign statements, disclosing campaign contributions and expenditures. See Government Code Sections 84100-84214.[1/] Article 11, Section 5 of the California Constitution states that chartered cities shall have authority to "make and enforce all ordinances and regulations in respect to municipal affairs" and to provide for the "conduct of city elections." In addition, Article 11, Section 5 provides that chartered cities shall have plenary authority relative to "the manner in which, the method by which, the times at which, and the terms for which" municipal officers

1/ All statutory references are to the Government Code unless otherwise noted.

or employees shall be elected or appointed.[2/] We have been asked to determine whether a chartered city, pursuant to the grant of authority contained in Article 11, Section 5, can enact a municipal ordinance which differs from and supercedes the pertinent campaign disclosure provisions of the Political Reform act. We conclude that it cannot.

Initially, we observe that this opinion request does not seek to determine whether a chartered city can enact an ordinance which merely adds to the provisions contained in Chapter 4 of the Political Reform Act. If that were the issue before us, our decision would be based on an interpretation of Section 81013, which provides, in pertinent part:

> Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title....

[2/] The provision states:

> (a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.
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> (b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

The request before us goes beyond an ordinance which merely adds to the Political Reform Act and seeks our opinion with respect to whether an ordinance also can supersede the disclosure provisions of the Act, and thereby supplant those provisions. The District Attorney's letter states, in particular, that the San Diego City Attorney believes "San Diego has the power to enact ordinances governing San Diego City Elections which differ from and supersede state statutes on the subject, including the Political Reform Act of 1974." Accordingly, our task is to decide which provisions are controlling, those of an ordinance or those of the Political Reform Act.

The resolution of this conflict ultimately depends on whether the matter in question, the disclosure of campaign finance information, is a matter solely of municipal concern or is a matter of concern both to the municipality and to the state. If disclosure of campaign finance information falls into the latter category, the provisions of the Political Reform Act will prevail. See Bishop v. San Jose, 1 Cal. 3d 56, 62-63 (1969); Professional Fire Fighters, Inc. v. Los Angeles, 60 Cal. 2d 276, 290-93 (1963); John Tennant Memorial Homes, Inc. v. Pacific Grove, 27 Cal. App. 3d 372, 384 (1972). If, on the other hand, the matter is exclusively a municipal affair, the provisions of the municipal ordinance will be controlling with respect to campaign finance disclosure obligations. Id.

Article 11, Section 5(b) of the California Constitution conclusively classifies the "conduct of city elections" and "the manner in which, the method by which, the times at which, and the terms for which" municipal officers shall be elected as matters solely of municipal concern. Accordingly, we must first decide whether the disclosure of campaign finance information involves the "conduct" of city elections or the manner in which or the method by which municipal officers shall be elected.

The leading case interpreting the scope of what is now Article 11, Section 5(b) is Socialist Party v. Uhl, 155 Cal. 776 (1909). In Uhl, the California Supreme Court held that nomination procedures for municipal officers were not controlled by a state primary election statute because "the election of municipal officers is strictly a municipal affair ... [and] city charters prevail over the general law as far as regulating the method in which a charter election shall be conducted." 155 Cal. at 788.

More recently, in Redwood City v. Moore, 231 Cal. App. 2d 563 (1965), an appellate court, relying on the Supreme Court's decision in Uhl, held that a chartered city had the right to limit a vote on the issuance of improvement bonds to landowners, as opposed to qualified electors. The court

reasoned that "the City was entitled to provide for election procedures since such procedures in a chartered city are municipal affairs," 231 Cal. App. 2d 585, and concluded that encompassed within this authority was the power to determine who could vote on the improvement bonds.

The courts also have relied on Article 11, Section 5(b) in concluding that chartered cities have the power to determine what information will be printed on the ballot or included in voters' pamphlets. In Rees v. Layton, 6 Cal. App. 3d 815 (1970), a court ruled that a state statute which permitted a candidate's occupation to be printed on the ballot was not applicable to chartered cities since the design and printing of the ballot traditionally is entrusted to the agency responsible for conducting the election in which the ballot is used. Similarly, in Mackey v. Thiel, 262 Cal. App. 2d 362 (1968), a chartered city's power to write and to circulate its voters' pamphlets in accordance with its own procedures was upheld since this function, too, is traditionally within the ambit of authority of the agency conducting the election.

Each of the foregoing cases clearly can be categorized under the rubric of "the manner in which" or "the method by which" municipal officers shall be elected.[3/] Each involved the way in which a municipality would conduct the process that would result in a vote by the electorate relative to issues or candidates.

The disclosure of campaign finance information, on the other hand, does not involve the manner in which or the method by which a municipality shall conduct its elections. It does not involve regulating who may vote or how those who seek office shall be nominated; nor does it involve requiring information to be included on the ballot or specifying action to be taken with respect to the voters' pamphlet both of which are published by the municipality. In fact, the disclosure of campaign finance information does not impose any significant obligations at all on chartered cities which impermissibly affect the way in which they will exercise their authority relative to the conduct of municipal elections. To the contrary, it imposes obligations

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3/ Similarly, the recent case of Gould v. Grubb, 14 Cal. 3d 661 (1975), which involved the constitutionality of an election procedure which automatically afforded an incumbent seeking reelection the top position on the election ballot, falls into this category. Accordingly, although the Supreme Court indicated that a provision of the Political Reform Act, Section 89000, does not apply to chartered cities, 14 Cal. 3d at 668, n.5, Gould is not determinative of the issue before us. Section 89000 involves only the order in which candidates will be listed on the ballot and this, as we already have indicated, is a matter of municipal concern.

primarily on candidates, officeholders and committees and regulates aspects of the private political activities of these persons or organizations.[4/]

The purpose of disclosure is to reveal to public scrutiny the contributions received and expenditures made by, or on behalf of, candidates in their quest for public office. The process by which this purpose is accomplished does not impinge upon the municipality's conduct of the election itself. Certainly, disclosure is related to the election in the sense that those who must make the requisite disclosures are involved in the election, and it is this involvement which triggers their duty to disclose. The disclosure, however, has little to do with the conduct of the election by the municipality. The municipality, regardless of the disclosure requirements imposed upon the candidates and committees, remains free to conduct its elections in whatever manner it desires, by whatever method it chooses, and at whatever time it designates. Accordingly, the disclosure requirements of the Political Reform Act do not infringe upon any authority reserved to chartered cities by virtue of Article 11, Section 5(b).

Having concluded that the disclosure of campaign finance information mandated by Chapter 4 of the Political Reform Act does not encroach upon the plenary authority of a chartered city with respect to the manner in which or the method by which it shall conduct its elections, it next becomes necessary to determine whether such disclosure is a municipal affair within the meaning of Article 11, Section 5(a). If disclosure of campaign finance information is exclusively a municipal affair, a chartered city can enact an ordinance which supersedes the disclosure provisions of the Political Reform Act. See text, supra at p.3. If, however, disclosure of campaign finance information is a matter of statewide concern, the provisions of the Political Reform Act cannot be superseded by

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4/ Of course, we do not mean to suggest by our conclusion herein that city officials are not involved in the administration of the Political Reform Act. The Act imposes a number of obligations on municipal officers which are incidental to the achievement of its purposes. See, e.g., Sections 81008, 81010, 91001. However, these obligations, which are necessary to the implementation of legislation which relates to a matter of statewide concern (see text, infra at 7-15), do not impermissibly infringe upon a chartered city's authority with respect to the conduct of its elections. See Wilson v. Walters, 19 Cal. 2d 111, 119 (1941). ("If a state statute affects a municipal affair only incidentally in the accomplishment of a proper objective of state-wide concern, then the state law applies to charter cities.")

those contained in a municipal ordinance. To the contrary, the requirements imposed by the Political Reform Act shall prevail, since "general law prevails over local enactments of a chartered city ... where the subject matter of the general law is of statewide concern." Professional Fire Fighters, Inc. v. Los Angeles, 60 Cal. 2d 276, 292 (1963). See also John Tennant Memorial Homes, Inc. v. Pacific Grove, supra.

In determining that the disclosure of campaign finance information is not solely a municipal affair, but also a matter of statewide concern, we start with the proposition that there is no precise definition of what constitutes a "municipal affair." Bishop v. San Jose, 1 Cal. 3d 56, 62 (1969); Professional Fire Fighters, Inc. v. Los Angeles, supra. Each case must be decided on the basis of its own special facts, and "what may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state." Bishop v. San Jose, supra at 63. See also CEEED v. California Coastal Zone Conservation Commission, 43 Cal. App. 3d 306, 321 (1974); Pac. Tel. & Tel. Co. v. San Francisco, 51 Cal. 2d 766, 771 (1959).

The CEEED case is illustrative. In CEEED, the Court upheld the Coastal Initiative, Public Resources Code Sections 27000 et seq., against an attack that it represented an invalid intrusion into municipal affairs of chartered cities in violation of Article 11, Section 5(a) of the California Constitution. The Court conceded that "planning and zoning in the conventional sense have traditionally been deemed municipal affairs," but concluded that "where the ecological and environmental impact of land use affect the people of the entire state, they can no longer remain matters of purely local concern." CEEED v. California Coastal Zone Conservation Commission, 43 Cal. App. 3d 306, 323 (1974). Furthermore, the court considered the fact that the Act was passed as an initiative measure at a statewide election to be "evidence that the preservation and protection of the coastal resources are matters of concern to all the people of the state." Id. at 322-23.

The Political Reform Act also was passed by the voters as an initiative measure at a statewide election and included a declaration by the electorate that: "State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth," Section 81000(a); and to this end, "[r]eceipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." Section 81002(a). Accordingly, as in CEEED, the method of enactment and the express purpose of the Political Reform Act provide some evidence that disclosure of campaign finance information is a matter of statewide concern.

However, we do not rely solely on the expressed purpose of the people of the state in enacting the Political Reform Act, nor on the method by which it was enacted, to support our conclusion herein.[5] Indeed, these factors, standing alone, would not be sufficient.[5] We turn, therefore, to a consideration on the merits of why the disclosure of campaign finance information is a matter of statewide concern.

First and foremost is the obvious fact that, for a variety of reasons, the independence and integrity of all elected officials, regardless of whether they hold local or state office, is a matter of concern to people throughout the state.[6] As the Attorney General has aptly stated:

> So important is the independence and integrity of all elected officials that the reporting of campaign receipts and disbursements is the concern of the entire state as well as of the local communities (cf. Douglas v. City of Los Angeles, 5 Cal. 2d 123; Pipoly v. Benson, 20 Cal. 2d 366, 369). Elected officials of the various municipalities chartered and non-chartered throughout the state of California exercise a substantial amount of executive and legislative power over the people of the state of California, and this legislation aimed at obtaining the election of persons free from domination by self-seeking individuals or pressure groups is a matter of statewide concern.
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> 35 Op. Att'y. Gen. 230, 231-32 (1960) See also 57 Op. Att'y. Gen. 101, 101-02 (1974).

The state interest in disclosure of campaign finance information also can be illustrated by comparing it to the state interest in preventing bribery of public officials. State bribery statutes seek to protect the integrity of the governmental decision-making process by declaring it a crime for

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5/ The Supreme Court has indicated, in the context of a measure passed by the Legislature, that "the fact ... that the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative of the issue as between state and municipal affairs ...." Bishop v. San Jose, supra at 63. It is doubtful that this conclusion would be altered by the fact that the initiative, rather than a legislative enactment, was used to address a particular subject.

6/ One such reason why the integrity of local officials is a matter of state interest is that state funds are provided to chartered cities for various local programs. If these programs are not administered honestly and impartially, people from all over the state, as well as the local citizenry, suffer since it is their tax dollars which may be squandered or spent improperly.
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any person to give or to offer anything of value to various public officials, including members of city councils or boards of supervisors, or for such officials to receive or to agree to receive anything of value, upon any understanding that a vote, opinion or action will be influenced thereby. Penal Code Section 165. The disclosure provisions of the Political Reform Act are designed to reach a more subtle problem, but one which also jeopardizes the integrity of governmental decisions. This is the disproportionate access and influence which contributors of large amounts of money have with recipient officeholders. The Act does not seek to end this disproportionate access and influence by prohibiting contributions, but it does attempt to minimize or to eliminate it by opening campaign finance to public scrutiny. Sections 81001(b), 81001(c), 81002(a).

Clearly, the state has a legitimate interest in preventing bribery and the regulation of such conduct is a matter of state concern and not solely a municipal affair. 35 Op. Att'y. Gen. 230, 231-32 (1960); 57 Op. Att'y. Gen. 101, 102 (1974). We think, in light of the similarity of purpose, that the same conclusion is appropriate with respect to the disclosure of campaign finance information.

In addition, there certainly is a state interest in providing candidates in nonmunicipal elections with relatively equal conditions under which they can seek to raise funds in their quest for public office. The failure to maintain statewide uniformity with regard to campaign disclosure laws could frustrate this interest.

Candidates for state office often already are officeholders in chartered cities. If such candidates were subject to different, and perhaps weaker, disclosure laws during their campaigns for local office, or while they held local office, they might be able to gain distinct fundraising advantages over their opponents who were not officeholders or who lived in other jurisdictions and, during the campaign for state office, were subject to the disclosure requirements of the Political Reform Act. The local officeholders might be able to raise significant amounts of money during their campaigns for local office, or while in office, much of which could be targeted for use in their campaigns for state office, because persons subject to weaker disclosure requirements might be willing to contribute more, or the local officeholders might be willing to accept contributions from special interests they might otherwise avoid if such contributions were subject to public scrutiny.

(footnote 6 cont.)
Moreover, it is obvious that the actions and decisions of locally elected officials do not affect only the local citizens who select those officials. See CEEED v. California Coastal Zone Conservation Commission, 43 Cal. App. 3d 306, 322 (1974); Scott v. Indian Wells, 6 Cal. 3d 541 (1972).

Furthermore, local officeholders might not only enjoy a distinct fundraising advantage over their opponents, but also might be able to frustrate the purposes of the Political Reform Act even though they are running for state office. It would be difficult for enforcement officials to establish which contributions, if any, were made in anticipation of the race for state office and, thus, the sources of the local officeholder's support in his campaign for state office might go undiscovered.

Another way in which the purposes of the Political Reform Act's disclosure requirements could be frustrated by the failure to impose uniformity relative to disclosure would be that local officeholders could serve as conduits for contributions to candidates for state office. If, for example, a municipal ordinance did not require disclosure of contributions of less than $3,000, a donor could make an undisclosed contribution of $2,999 to a local candidate who, in turn, could make a contribution in the same amount to a candidate for state office. Under these circumstances, the Political Reform Act might require disclosure of the second contribution only and the true source of the funds would remain unknown.[7/]

We do not mean to intimate by this discussion that the potential problems which we have described will occur in San Diego. To the contrary, San Diego has enacted a comprehensive campaign finance ordinance which is comparable to, and in some respects more far-reaching than, the Political Reform Act.[8/] The goals of political reform, therefore, would not be greatly affected in this specific instance regardless of which way we resolve the supersession question. If, however, we were to conclude that a chartered city ordinance can supersede the Political Reform Act, nothing would prevent other municipalities from replacing the state law with weaker provisions and thereby turning potential problems into real problems.

7/ Of course, compliance with the Political Reform Act would necessitate disclosure of the original contribution if the transaction was an obvious sham designed to circumvent the Act's disclosure requirements, and the second contributor, in fact, was acting "on behalf of, or ... as the intermediary or agent" of the first contributor. Section 84302. The problem, however, would be to establish that the transaction was a sham and, depending on the sophistication of the parties involved, this could prove to be difficult.

8/ For example, the San Diego ordinance contains limitations on the size of campaign contributions and prohibits contributions to candidates, or committees supporting candidates, by corporations, partnerships, labor unions or other business or labor organizations. San Diego, California Municipal Election Campaign Contribution and Expenditure Control Ordinance, §§ 27.2941, 27.2942. The Political Reform Act does not have comparable provisions.

The state is entitled to protect itself against such an eventuality; and the most effective form of protection against circumvention of the disclosure requirements of the Political Reform Act, and against potential inequities between candidates for the same state office, is the maintenance of uniform standards of disclosure which are applicable to candidates, officials and committees at both the state and local levels of government.[9/] To the extent that uniform standards are necessary to effectuate the enforcement of requirements which clearly relate to a matter of statewide concern (i.e., elections for state office), the disclosure of campaign finance information by candidates and committees involved in elections for local office also becomes a matter of statewide concern.[10/] Accordingly, both because maintaining the independence and integrity of local officials is a matter of concern to people all over the state and because the effectuation of the disclosure requirements of the Political Reform Act necessitates applying them in elections for local office, we conclude that the disclosure of campaign finance information is a matter of statewide concern.

Since the disclosure of campaign finance information is a matter of statewide concern and not solely a municipal affair within the meaning of Article 11, Section 5 of the California Constitution, the provisions of Chapter 4 of the Political Reform Act must prevail over any conflicting provisions of a municipal ordinance. Bishop v. San Jose, supra; Professional Fire Fighters, Inc. v. Los Angeles, supra. A chartered city cannot, therefore, enact an ordinance which both differs from and supersedes the disclosure provisions of the Political Reform Act. A chartered city may, however, as the Act provides, enact an ordinance which imposes additional requirements.[11/]

Approved by the Commission on July 6, 1976. Concurring: Brosnahan, Lowenstein and Quinn. Abstaining: Lapan. Dissenting: Carpenter.

Daniel H. Lowenstein
Chairman

9/ The Political Reform Act permits only the imposition of additional requirements by a municipality. Section 81013; see text, supra at p.2.

10/ It also should be noted that uniform requirements will facilitate compliance with disclosure obligations by committees that support candidates in many different localities or at both the state and local levels of government. A proliferation of differing disclosure requirements and reporting schemes would merely serve to make more difficult the already complex task facing such committees. For this reason too, the disclosure of campaign finance information is not solely a municipal affair.

11/ San Diego, as we observed earlier, already has [illegible]

CARPTENTER, COMMISSIONER, DISSENTING:

I dissent.

In 1909, the California Supreme Court held, "That the election of municipal officers is strictly a municipal affair goes without question." Socialist Party v. Uhl, 155 Cal. 776, 788 (1909). Two years later, the voters approved a proposition amending Section 8 1/2 (now Section 5) of Article XI clarifying the language and codifying Socialist Party v. Uhl. This constitutional guarantee can be limited only by a vote of the people amending the Constitution. Professional Fire Fighters v. City of Los Angeles, 60 Cal. 2d 276 (1963), is not helpful to the majority to argue that disclosure is a matter of statewide concern. Justice Peters states at page 291, "None of these cases, nor any other similar cases relied upon by defendant, hold that all matters connected with public employment in a chartered city are exclusively municipal affairs in which the state has no concern." Both Uhl and Section 5 of Article XI declare that all matters connected with municipal elections of municipal officers are municipal affairs.

In Bishop v. City of San Jose, 1 Cal. 3d 56,63 (1969), the court in discussing the extremely complex problem of determining municipal affair versus statewide concern said:

> In exercising the judicial function of deciding whether a matter is a municipal affair or of statewide concern, the courts will of course give great weight to the purpose of the Legislature in enacting general laws which disclose an intent to preempt the field to the exclusion of local regulation (see Ex parte Daniels (1920) 183 Cal. 636, 639-640 [192 P. 442, 21 A.L.R. 1172]), and it may well occur that in some cases the factors which influence the Legislature to adopt the general laws may likewise lead the courts to the conclusion that the matter is of statewide rather than merely local concern. However, the fact, standing alone, that the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative of the issue as between state and municipal affairs, nor does it impair the constitutional authority of a home rule city or county to enact and enforce its own regulations to the exclusion of general laws if the subject is held by the courts to be a municipal affair rather than of statewide concern; stated otherwise, the Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern.

More recently in a decision involving the same article of the Constitution, the court stated:

> To begin with, this is not the usual case in which the courts are without constitutional guidance in resolving the question whether a subject of local regulation is a "municipal affair" and hence within the general home rule power vested in charter cities by subdivision (a) of section 5, article XI, of the Constitution. Here we have the benefit of a specific directive in subdivision (b) of that section, which grants "plenary authority" to charter cities to prescribe in their charters the "qualifications" of their employees. A requirement that a municipal employee reside within the borders of the city that hires and pays him has long been deemed a "qualification" for the employment in question, similar in this regard to minimum standards of age, health, education, experience, or performance in civil service examinations.
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> Ector v. City of Torrance, 10 Cal. 3d 129, 132 (1973). (Emphasis added.) (Footnotes and citations omitted.)

In the Ector case the Supreme Court was considering Section 5(b) of Article XI which deals with constitutionally specified municipal affairs rather than judicially determined municipal affairs under the provisions of Section 5(a) of Article XI. Section 5(b) provides:

> (b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) "plenary" authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.
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> (Emphasis added.)

> "Plenary" means full, entire, complete, absolute, perfect, unqualified.
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> Evans v. Metropolitan Utilities Dist. of Omaha, 188 N.W. 2d 851, 854, 187 Neb. 261 (1971).

It is clear from the foregoing that the people in approving Section 5(b) of Article XI of the California Constitution have determined that the election of municipal officers (manner, method, times and terms) is a municipal affair and even the courts are constrained by such provision from declaring otherwise.

The federal Constitution provides in Section 4 of Article I that:

> The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.
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> (Emphasis added.)

In United States v. Manning, 215 F. Supp. 272 (1963), a suit challenging the constitutionality of Section 1971(e) of the federal Civil Rights Act of 1960, the court held that Section 4 of Article I is a broad and effective grant of authority to Congress over federal elections and that, "There is little regarding an election that is not included in the terms, time, place and manner of holding it."

(Emphasis added.)

Opinions of the Attorney General quoted by the majority fail either to discuss Section 5 of Article XI (or its predecessor) or to discuss the leading decisions interpreting those provisions of the Constitution. It may be conceded that purity of elections is a matter of federal as well as state concern. An election of municipal officers is nevertheless strictly a municipal affair.

The fact that the Political Reform Act of 1974 is an initiative statute adopted by the voters does not give it the status of a constitutional amendment which it will take to amend Article XI, Section 5. Neither an initiative statute nor a statute enacted by the Legislature can amend the Constitution and neither the Legislature by statute nor the voters by initiative statute can ultimately declare a matter to be one of statewide concern rather than a municipal affair.

An analysis of San Diego Ordinance No. 11034 N.S., April 10, 1973, relating to the control of municipal election campaign contributions and expenditures reveals it has substantially the same purpose as federal and state laws; namely, to guarantee the purity of elections through required record keeping and disclosure and to minimize the improper influence of wealth in the conduct of elections. The ordinance creates a central Campaign Contribution Trust Fund under the control of the City Auditor and Controller who serves as trustee and administrator of the fund. This guarantees better control and record keeping of contributions and expenditures than either Waxman-Dymally or the Political Reform Act of 1974. As an alternative a trust account to be administered by the trust officer of any local bank may also be established. Campaign statements required by the ordinance differ only as to threshold amounts just as Waxman-Dymally differs from the Political Reform Act of 1974.

Unlike the Political Reform Act of 1974, the ordinance imposes certain limitations on contributions to candidates or in support of measures by individuals, corporations, unions and candidates. While certain of these limitations cannot meet the constitutional tests declared in Buckley v. Valeo, ___ U.S. ___, 96 S. Ct. 612 (1976), most are in addition to the requirements of the Political Reform Act of 1974 and expressly authorized by Section 81013 of the Government Code.

The limit on anonymous contributions imposed by Section 27.2943 of the ordinance is $200 whereas the limit established by Section 84304 of the Government Code is $50. The Fair Political Practices Commission currently is supporting an amendment to increase the $50 limit to $100. This is a clear case of a less restrictive provision in the ordinance, but also clearly a municipal affair as it relates to the municipal election of members of the San Diego City Council.

The ordinance includes several other expenditure reporting requirements not included in the Act but which are clearly permitted by Section 81013.

City elections are a municipal affair within the meaning of Article XI, Section 5(b) of the California Constitution and San Diego has the authority to enact Ordinance No. 11034 N.C. which differs from, and in one section (anonymous contributions) supersedes, the Political Reform Act of 1974.

Richard J. Carpenter

Richard J. Carpenter
Commissioner